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7 File No.: 124399

8 *Attorneys for Plaintiff*

9 Matthew McDermott,

10 Plaintiff,

11 Case No:

12 v.

13 H. Justin Realty Services LLC,

14 Defendant.

15 **COMPLAINT**

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff Matthew McDermott (“*Plaintiff*”), by and through his undersigned counsel, for
18 his Complaint against Defendant H. Justin Realty Services LLC (“*Defendant*”) states and
19 alleges as follows:

20 **INTRODUCTION**

21 1. This action seeks to recover damages for copyright infringement.

22 2. Plaintiff herein creates photographic images and owns the rights to these images
23 which Plaintiff licenses for various uses including online and print publications.

24 3. Defendant owns and operates a realtor account on LoopNet named as H. Justin
25 Realty Services (the “*Account*”).

26 4. Defendant, without permission or authorization from Plaintiff actively copied,
27 stored, and/or displayed Plaintiff’s Photograph on the Account and engaged in this misconduct
28 knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Matthew McDermott is an individual who is a citizen of the State of New York and maintains a principal place of business 23-38 33rd Street, Astoria in Queens County, New York.

6. Upon information and belief, Defendant H. Justin Realty Services LLC, is a New York limited liability company with a principal place of business at 261 W 35th Street, New York in New York City, New York and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over H. Justin Realty Services LLC because it maintains its principal place of business in New York.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because H. Justin Realty Services LLC does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the “USCO”) which cover many of Plaintiff’s photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff's own protectable copyright interests.

14. H. Justin Realty Services LLC is the registered owner of the Account and is

1 responsible for its content.

2 15. H. Justin Realty Services LLC is the operator of the Account and is responsible
3 for its content.

4 16. The Account is a popular and lucrative commercial enterprise.

5 17. The Account is monetized in that it promotes real estate brokerage services and,
6 upon information and belief, Defendant profits from these activities.

7 18. On December 30, 2020, Plaintiff authored a photograph of the glass ceiling of
8 the Moynihan Train Hall (the “*Photograph*”). A copy of the Photograph is attached hereto as
9 Exhibit 1.

10 19. Plaintiff applied to the USCO to register the Photograph on or about January 5,
11 2021 under Application No. 1-10044188893.

12 20. The Photograph was registered by the USCO on or about January 5, 2021 under
13 Registration No. VA 2-230-987.

14 21. On November 3, 2021 Plaintiff first observed the Photograph on the Account in
15 a listing for a commercial building. A copy of the screengrab of the Account including the
16 Photograph is attached hereto as Exhibit 2.

17 22. The Photograph was displayed at URL: <https://www.loopnet.com/Listing/261-W-35th-St-New-York-NY/16793038/>.

18 23. The Photograph was stored at URL:
19 https://images1.loopnet.com/i2/ljKmn7lSoy-WTur_ji4FWWmgXY2lREDL9o6dO7owPlw/110/261-W-35th-St-New-York-NY-moynihan-train-hall-7-Large.jpg and at https://images1.loopnet.com/i2/ljKmn7lSoy-WTur_ji4FWWmgXY2lREDL9o6dO7owPlw/116/261-W-35th-St-New-York-NY-moynihan-train-hall-7-LargeHighDefinition.jpg.

20 24. Without permission or authorization from Plaintiff, Defendant volitionally
21 selected, copied, stored and/or displayed Plaintiff copyright protected Photograph as is set forth
22 in Exhibit “1” on the Account.

1 25. Upon information and belief, the Photograph was copied, stored and displayed
2 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
3 "Infringement").

4 26. The Infringement includes a URL ("Uniform Resource Locator") for a fixed
5 tangible medium of expression that was sufficiently permanent or stable to permit it to be
6 communicated for a period of more than a transitory duration and therefore constitutes a specific
7 infringement. 17 U.S.C. §106(5); *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160
8 (9th Cir. 2007).

9 27. The Infringement is an exact copy of the entirety of Plaintiff's original image
10 that was directly copied and stored by Defendant on the Account.

11 28. Upon information and belief, Defendant takes an active and pervasive role in the
12 content posted on its Account, including, but not limited to copying, posting, selecting,
13 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

14 29. Upon information and belief, Defendant directly contributes to the content
15 posted on the Account by, inter alia, directly employing reporters, authors and editors as its
16 agents, including but not limited to Christine Russo whose Defendant's Account lists her as a
17 "Broker" ("Employees").

18 30. Upon information and belief, at all material times the Employees were acting
19 within the course and scope of their employment when they posted the Infringement.

20 31. Upon information and belief, at all material times the Employees were acting
21 within the course and scope of their agency when they posted the Infringement.

22 32. Upon information and belief, the Photograph was willfully and volitionally
23 posted to the Account by Defendant.

24 33. Upon information and belief, the Infringement were not posted at the direction
25 of a "user" as that term is defined in 17 U.S.C. §512(c).

26 34. Upon information and belief, Defendant engaged in the Infringement knowingly
27 and in violation of applicable United States Copyright Laws.

35. Upon information and belief, Defendant has the legal right and ability to control and limit the infringing activities on its Account and exercised and/or had the right and ability to exercise such right.

36. Upon information and belief, Defendant monitors the content on its Account.

37. Upon information and belief, Defendant has received a financial benefit directly attributable to the Infringement.

38. Upon information and belief, the Infringement increased traffic to the Account and, in turn, caused Defendant to realize an increase in its brokerage services.

39. Upon information and belief, a large number of people have viewed the unlawful copies of the Photograph on the Account.

40. Upon information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

41. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential market for the Photograph.

42. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(*Direct Copyright Infringement, 17 U.S.C. §§501 et seq.*)

43. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

44. The Photograph is an original, creative work in which Plaintiff owns valid copyright properly registered with the United States Copyright Office.

45. Plaintiff has not licensed Defendant the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

46. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

47. Defendant's reproduction of the Photograph and display of the Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

48. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that they used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent or authority, by using it in the infringing listing on the Account.

49. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for the infringement pursuant to 17 U.S.C. § 504(c).

50. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

JURY DEMAND

52. Plaintiff hereby demands a trial of this action by jury.

PRAAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed upon Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

a. finding that Defendant infringed upon Plaintiff's copyright interest in the

Photograph by copying and displaying without a license or consent; for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for the infringement pursuant to 17 U.S.C. § 504(c), whichever is larger; for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works; for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505; for pre judgment interest as permitted by law; and for any other relief the Court deems just and proper.

DATED: April 12, 2022

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